

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
<b>TOWN OF VONORE</b>	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. WPC08-0122</b>
	)	

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "Division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

**II.**

The Town of Vonore, (hereinafter the "Respondent") is the owner and operator of a sewage collection system, in Monroe County, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent through the Honorable Fred Tallent, Mayor, at P.O. Box 218, Vonore, Tennessee 37885.



## **JURISDICTION**

### **III.**

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq., the Water Quality Control Act, (hereinafter the “Act”) has occurred, or is about to occur, the Commissioner may issue a complaint to the violator, and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the State resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the Commissioner may delegate to the Director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the Commissioner under the Act.

### **IV.**

The Respondent is a “person” as defined at T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.



**V.**

Tennessee Code Annotated §69-3-108(c) requires any person operating a sewerage system to obtain a permit from the Department. A State Operating Permit (SOP) to operate a sewerage system may be obtained by submitting a Notice of Intent (NOI).

**FACTS**

**VI.**

The Respondent has SOP coverage and is assigned Permit Number SOP-92111 to operate a wastewater collection system. The permit requires that the system be operated by a person duly certified by the commissioner to operate a wastewater collection system.

**VII.**

On April 10, 2007, the division issued a Notice of Violation (NOV) to the site for failing to have a certified collection system operator.

**VIII.**

On March 20, 2008, division personnel conducted a Compliance Evaluation Inspection (CEI) to review the compliance status of the Respondent's SOP. Upon completion of a file review, division personnel determined that the Respondent had been operating the collection system without a certified operator.



## **IX.**

On May 5, 2008, the division issued the Respondent a Notice of Violation (NOV) as a result of the violation determined during the March 20, 2008, CEI.

## **VIOLATIONS**

### **X.**

By failing to have a certified operator as required by the SOP, the Respondent has violated T.C.A. §68-221-904(a) and §69-3-114(b) which states in part:

§68-221-904(a) states, in part:

It is unlawful for any person, firm or corporation, both municipal and private, operating a water supply system or wastewater system, to operate the water treatment plant, wastewater treatment plant, water distribution system, or wastewater collection system unless the competency of the operators in direct charge of such system are duly certified by the Commissioner under the provisions of this part in effect on and after May 25, 1984, or under the provisions of former chapter 13, part 3 of this title in effect prior to May 25, 1984.

§ 69-3-114(b) states, in part:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.



## **ORDER AND ASSESSMENT**

### **XI.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, within 30 days of receipt of this ORDER, submit documentation to the division that a person duly certified by the commissioner is operating the wastewater collection system. Documentations should be submitted to the Water Pollution Control manager at the Knoxville Environmental Field Office, 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
2. The Respondent shall pay a CIVIL PENALTY of FIVE THOUSAND DOLLARS (\$5,000.00) to the Department, hereby assessed, to be paid as follows:
  - a. The Respondent shall, within 30 days of receipt of this ORDER, pay a CIVIL PENALTY in the amount of ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$1,250.00).
  - b. If, and only if, the Respondent fails to comply with item 1 above in a timely manner, the Respondent shall pay THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$3,750.00) to the Division within 30 days of default.

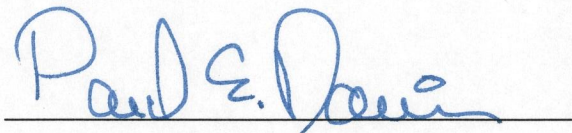


The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondents are advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the Director of the Division of Water Pollution Control on this 9<sup>th</sup> day of June, 2008.



PAUL E. DAVIS, P.E.  
Director, Division of Water Pollution Control



### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but



not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20<sup>th</sup> Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.